*** THE HONOURABLE SRI JUSTICE V. ESWARAIAH**

+ WRIT PETITION No.2385 OF 1998

% Dated:22.10.2007

K.G.Krishna Murthy (died) per LRs,
and others..

…PETITIONERS

Versus

The Joint Collector, Ranga Reddy District,
and others.

…RESPONDENTS

! Counsel for the petitioner : Sri N.Ranga Rao

^ Counsel for the respondents: Government Pleader for Revenue
Sri N.Vasudeva Reddy.

< Gist:

> Head Note:

? Cases referred:

(1998) 2 SCC 642

THE HONOURABLE SRI JUSTICE V. ESWARAIAH

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BETWEEN

K.G. Krishna Murthy (died) per LRs.
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…PETITIONERS

AND

Joint Collector,
Ranga Reddy District
and another.

…RESPONDENTS

ORDER:

This writ petition has been filed questioning the order of the Joint Collector, Ranga Reddy District, in File No.B3/4195/95 dated 18.10.1997 in confirming the order of the Revenue Divisional Officer, Vikarabad Division, Ranga Reddy District, in File No.D/3225/1986 dated 04.03.1995 in rejecting the application of the first petitioner – late K. G. Krishna Murthy for grant of occupancy rights under Section
5 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for short 'the Act') and to set aside the same as illegal and arbitrary by issuing a Writ of Mandamus.

2. The original applicant – K. G. Krishna Murthy, whose application has been rejected by order of the Revenue Divisional Officer dated 04.03.1995, filed an appeal under Section 24 of the Act and died during the pendency of the appeal and his legal heirs, were brought on record, are petitioners 2 to 9 herein. The respondents 1 and 2 are the Joint Collector and Revenue

Divisional Officer respectively and the third respondent – Rama Chary, also died during the pendency of the writ petition and his legal heirs were brought on record as respondents 4 to 7 herein.

3. Heard the arguments of the learned Senior Counsel, Sri Vilas Afzalpurkar for the petitioners; learned Government Pleader for respondents 1 and 2 and Sri N. Vasu Deva Reddy, learned counsel for the respondents 3 to 7.

4. It is the case of the petitioners that late K. G. Krishna Murthy filed an application before the Revenue Divisional Officer, Vikarabad for grant of occupancy rights certificate under the Act in respect of the lands in an extent of Ac.13.05 cents in Sy.No.161 and an extent of Ac.15.30 cents in Sy.No.162 totaling an extent of Ac.28.35 guntas situated at Antharam Village, Tandur Mandal, Ranga Reddy District on the ground that he was Kabiz-e-Kadim in possession of the lands since 1958 for more than 12 years before the date of vesting i.e. 01.11.1973. Therefore, he is entitled for grant of occupancy rights certificate. The said land is an Inam land and one Nereti Narsappa was the original Inamdar and on an application filed by the said Inamdar to correct the entries, the same was allowed in File No.A1/9493/1962 dated 30.04.1963 and the said order was implemented as per File No.A2/709/63 dated 21.05.1964. The applicant purchased the said land from the Inamdar on 01.06.1963 and since then the petitioners have been in absolute and uninterrupted possession and enjoyment of the said land and paying land revenue. The said lands were computed in the holding of the petitioners by the Land Reforms Tribunal in C.C.No.T/1161/75 dated 03.12.1976 and declared as non-surplus holder. The possession of the first petitioner was proved as on 01.11.1973 but his application for grant of occupancy rights certificate was erroneously rejected by the Revenue Divisional Officer and confirmed by the Joint Collector.

5. Learned counsel for the petitioners submits that both the authorities have relied on earlier proceedings passed under the Act and therefore, the rejection of his name based on the earlier orders rejecting to grant occupancy rights certificate are illegal and unsustainable. Therefore, the impugned order is liable to be set aside and the matter requires to be remitted to the Revenue Divisional Officer. In support of his contention the learned counsel also relied on a judgment of the Supreme Court in **SAYYED ALI v. A.P. WAKF BOARD**[1] contending that the earlier proceedings, decided by the authorities not having jurisdiction, cannot be relied on while considering the application of the first petitioner for grant of occupancy rights.

6. The facts decided by the Supreme Court relate to the wakf properties and insofar as the wakf properties are concerned, it is stated that the Tahsildar has no right or authority to decide as to whether a property is wakf property or not; therefore, any grant of occupancy rights under the Inams Abolition Act is without jurisdiction and illegal. Therefore, I am of the opinion that the aforesaid judgment of the Supreme Court has no application to the facts of the case.

As a matter of fact, the learned counsel for the respondents submits that the said judgment helps to the contentions of the respondents under the Act as no private individual has got any right to get any occupancy rights except a temple, institution or endowment.

In the aforesaid case in respect of the wakf property occupancy rights certificate have been issued by the Tahsildar under the Act and thus, the occupancy rights have been held as illegal and unsustainable as Tahsildar has not right or jurisdiction to conduct enquiry with regard to wakf property and issue occupancy rights certificate.

7. In the instant case the property relate to temple and is a service Inam land; therefore, for the imams held by or for the benefit of charitable or

religious institution, the petitioners are not entitled to be registered as occupants; therefore, the order of the Revenue Divisional Officer rejecting the application of the petitioner for grant of occupancy rights certificate has been rightly confirmed by the Joint Collector.

A perusal of both the impugned orders goes to show that the contention of the first petitioner with regard to his entitlement to grant of occupancy rights certificate have not only been considered with reference to the earlier orders but the entitlement of the petitioner has also been considered independently, dehorsing the earlier orders.

The petitioner has failed to establish himself either as a tenant or Kabiz-e-Kadim; therefore, the petitioner is not entitled for grant of occupancy rights. Absolutely there is no substance or any material on record with regard to the contention that Nereti Narsappa was the original Inamdar and that the petitioners purchased the said property from him on 01.06.1963 but on the other hand the records go to show that Nereti Narsappa has nothing to do with the said Inam land. As per the records furnished by the third respondent i.e. copies of pahanies from 1983-84 to 1995-96; copy of judgment in O.S.No.98 of 1993 dated 28.03.1990; copy of Kidmat Mash (service Inam) in urdu 1311 F along with its translation in English and copy of letter of Makhtedar, 1338 – F; go to show that the said lands are service Inam lands given by HEH Nizam in favour of the father of the third respondent viz. late Kista Chary for the purpose of maintenance of Sri Venkateshwara Swamy Temple and also for performing daily pujas and for feeding pilgrims, situated at Chandragiri alias Dasthagiripet, Hamlet of Anatharam Village. The same was recorded in the name of the fore fathers of the respondents 4 to 7 as Inamdaars on the request of Maktedar in revenue records. Therefore, it is incorrect to contend that the Maktedar gave Inam but not HEH Nizam; the Maktedar only implemented the Inam given by HEH Nizam.

Even the Khasra Pahani, which is a record of title, shows the name of

the third respondent as Inamdar and Pujari. Therefore, it is incorrect to state that one Nereti Narsappa was the Inamdar. As per the conditions of Mumtakab the third respondent and his fore fathers were performing daily puja in the temple and maintaining the temple out of the income derived from the said lands. While so, during the lifetime of the third respondent the lands were given to late K.G. Krishna Murthy on lease basis from 1962 onwards year to year basis and after the expiry of the lease period the first petitioner delivered the lands to the third respondent. Even the ceiling declaration filed by the first petitioner goes to show that the third respondent was the Pattedar and he was in possession as tenant. Therefore, the allegation of the petitioners that they purchased the said lands from Nereti Narsappa on 01.06.1963 is totally baseless, incorrect and misleading. In fact, there was no dispute with regard to the Inam property and the petitioner admitted before the Revenue Divisional Officer and the Joint Collector that the third respondent is the Inamdar of the said property. The third respondent filed an application for grant of occupancy rights certificate as Inamdar but in view of the pendency of the litigation at the instance of the petitioner the occupancy rights could not be granted either in favour of the temple or its pujari.

8. Petitioner suppressed the real facts with regard to filing of suits in the writ petition and a perusal of the record goes to show that the petitioner filed a suit in O.S.No.98 of 1983, on the file of the District Munsif, Tandur for grant of injunction against the third respondent in respect of the said lands asserting that he got the title based on possession and the said suit was dismissed on 28.03.1990.

The petitioner also filed another suit in O.S.No.101 of 1982 on the file of the same Court for recovery of damages for cutting the trees and the said suit was also dismissed on 30.04.1985. In the said suit the petitioner admitted that he came into possession of the said lands as leaseholder for two years. Thus, absolutely there is no evidence on record that goes to show that the

petitioner was in possession as a tenant 12 years prior to 01.11.1973 the crucial date to consider the grant of occupancy rights.

In fact, the petitioner filed an application for grant of occupancy rights certificate before the Revenue Divisional Officer on an earlier occasion and the same was rejected against which an appeal was filed before the Joint Collector and the order of the Revenue Divisional Officer was confirmed by the Joint Collector on 22.11.1975 in Case No.B6/17237/76 holding that the said lands are service Inam meant for maintenance of Sri Venkateshwara Swamy Temple. The said order has become final and the petitioner never challenged the same.

9. The arguments of the learned counsel for the petitioners are too technical in contending that the authorities were not having any right to decide the request to grant occupancy rights under the Act in respect of the lands belonging to charitable or religious institutions and therefore, the earlier orders are illegal and unsustainable and cannot operate as resjudicata. It was the contention of the petitioner that he is entitled to get the occupancy rights certificate rather than the third respondent under the Act, and the authorities after enquiry under the Act rejected his claim and therefore it cannot be said that the authorities have no right to consider the claim of the petitioner.

The arguments of the petitioner cannot stand to any legal scrutiny,

as the petitioner himself filed application for grant of occupancy rights claiming himself as Kabiz-e-Kadim and entitled for grant of occupancy rights but he failed to establish that he is Kabiz-e-Kadim.

Kabiz-e-Kadim means the holder of Inam land, who has been in possession of such land at the time of the grant of inam or has been in continuous possession of such land for not less than 12 years before the date of vesting and who pays the Inamdar only the land revenue.

10. In the instant case the petitioner utterly failed to establish that he is

Kabiz-e-Kadim and there is no evidence to show that he was in continuous possession for 12 years prior to the crucial date of 01.11.973 on the other hand, though the records go to show that name of the petitioner was found as cultivator in the pahanies from 1961-62 to 1982-83 along with the third respondent as cultivator to some extent of land. There is no dispute that in the column pattedar the name of the third respondent was shown as Inamdar. There is no dispute that the name of the petitioner was found in possession column as on 01.11.1973 but the record goes to show that he was only a cultivator but not a Kabiz-e-Kadim. Therefore, I am of the opinion that both the authorities rightly rejected the request of the petitioner for grant of occupancy rights certificate. Admittedly, the said land is Mashrutul Khidmat (Service Inam); if that be so, there is a prohibition under the first proviso to Section 4(1) of the Act as amended by Act 19 of 1994 with effect from 26.12.1985, according to which the Inams held by or for the benefit of charitable and religious institutions no person shall be to be registered as occupant even in respect of occupant relating to Kabiz-e-Kadim, permanent tenants, protected tenants but the institution alone shall be entitled to be registered as an occupant of all Inam lands. Further any registration shall be deemed always to have been null and void and no effect shall be given to such registration.

11. Learned counsel for the unofficial respondents submits that the respondents 4 to 7 are not claiming any occupancy rights as admittedly the lands being service inam the Lord Venkateshwara (Deity) alone is the owner and they have no objection for grant of occupancy rights in the name of the deity, as they are entitled only to render service but not to hold the said property as absolute owners.

12. In view of the aforesaid facts and circumstances of the case,

I do not see any infirmity legal or otherwise in the orders impugned and the

writ petition is devoid of any merit.

The writ petition is accordingly dismissed. There shall be no order as to costs.

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V. ESWARAIAH, J

October 22, 2007
DSK

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[1] (1998) 2 SCC 642